No. 24-343

In the Supreme Court of the United States

ROBERT H. ALAND,

Petitioner,

v.

U. S. DEPARTMENT OF THE INTERIOR; DEB HAALAND, SECRETARY OF THE U.S. DEPARTMENT OF THE INTERIOR; U.S. FISH & WILDLIFE SERVICE; AND MARTHA M. WILLIAMS, DIRECTOR OF THE U.S. FISH & WILDLIFE SERVICE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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September 23, 2024
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QUESTIONS PRESENTED

These are questions of first impression. The Supreme Court has never decided these fundamental questions with regard to a Presidential appointment that violates a federal statute.[1]

Respondents have not filed an Answer, since these questions arise out of Respondents' motion to dismiss in the District Court, which was granted and affirmed on appeal by the Seventh Circuit. Thus, if this Court grants this Petition and decides the jurisdictional questions in Petitioner's favor, the case should be returned to the District Court with instructions to decide the federal question under 16 U.S. § 742b(b) and the appropriate relief under the Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201, 2202. The Questions Presented are:

1. Standing. Whether Petitioner has standing within the meaning of Article III, Sec. 2, Clause 1 of the U.S. Constitution to challenge a federal government official (here Respondent Martha Williams ("Williams"), Director of the U.S. Fish & Wildlife Service ("FWS"), an agency of the U.S. Department of the Interior ("DOI")), who was appointed by the President of the United States, in violation of a statute of the United States (here 16 U.S. § 742b(b)) that prescribes the

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[1] The Congressional Research Service prepared a Report in 2015 that identified 33 department and agency leadership positions for which Congress created statutory qualification requirements, including 16 U.S.C. § 742b(b) (page 23). Henry B. Hogue, U.S. Congressional Research Service, *Statutory Qualifications for Executive Branch Positions* (RL 33886; Sept. 9, 2015). Thereafter at least one additional leadership position-Chief of the Internal Revenue Service Independent Office of Appeals-was created by Congress with statutory qualifications. 26 U.S.C. § 7803(e)(2)(C).

qualifications for that office (here "scientific education").

2. Subject Matter Jurisdiction. Whether the District Court has subject matter jurisdiction to hear and decide Petitioner's challenge (see above) under 28 U.S.C. § 1331, which vests federal district courts with original jurisdiction over "all civil actions arising under the . . . laws . . . of the United States," and the authority under the DJA to provide the appropriate relief.

PARTIES TO THE PROCEEDINGS

Robert H. Aland, a retired lawyer, appearing pro se, is the only Petitioner and was the only Plaintiff and Appellant below.

Respondent DOI is a federal executive department responsible for the administration of lands, minerals and other resources of the United States. Its mission is to protect and manage the nation's natural resources and cultural heritage for the benefit of the American people; provide scientific and scholarly information about those resources and natural hazards; and exercise the nation's trust responsibilities and special commitments to American Indians, Alaska Natives and island territories. It has over 70,000 employees. It oversees about 420 million acres of federal lands; about 55 million acres of tribal lands; more than 700 million acres of subsurface minerals; and about 2.5 billion acres of the outer continental shelf.

Respondent Haaland is Secretary of DOI and a member of the President's Cabinet. In that capacity she has management and supervisory responsibility for all functions of DOI and its agencies such as FWS, including, among others, management of public lands, national parks and national monuments and protection of endangered and threatened species, including wildlife, under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 – 1544. 16 U.S.C. § 742b(d).

Respondent FWS is an agency of DOI and is the federal agency responsible for the conservation, protection and restoration of fish, wildlife and natural habitats on federal lands across the United States and its insular territories. 16 U.S.C. § 742b(b), (c). Its primary mission is "to work with others to conserve,

protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people." It has about 9,000 employees. Its responsibilities include, together with the National Oceanic and Atmospheric Administration, an agency of the U.S. Department of Commerce, administering and enforcing the ESA, including listing and delisting species under the ESA.

Respondent Williams is the Director of FWS and in that position is "the chief executive of [FWS], establishes [FWS] policy, issues directives, and is responsible for all [FWS] does or fails to do"; "the Director establishes [FWS] policies and sets priorities with the support of the Assistant and Regional Directors."[2]

The FWS Director is the most important official in the federal government for protection and preservation of species, including ESA enforcement. FWS decisions are determinative in many cases with regard to whether individual members of a species, or entire species, survive or become extinct. Decisions by FWS also can apply to species located outside the United States such as whether trophy-hunted species in foreign countries can be imported into the United States. Williams has been and will continue to be required to make or approve all of those decisions, including, in some cases, by delegation of authority.

These Respondents were the only Defendants and Appellees below.

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[2] U.S. Fish & Wildlife Service, 050 FW 1, Directorate Roles and Relationships, ¶ 1.2.A (March 27, 1996).

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Seventh Circuit
No. 23-2415
Aland v. U.S. Department of the Interior et al.
Judgment: May 8, 2024 (affirming District Court)
Rehearing Denial: June 25, 2024

U.S. District Court, N.D. of Illinois, Eastern Div.
No. 1:22-cv-05821
Aland v. U.S. Department of the Interior et al.
Judgment: December 30, 2022
(dismissing case for lack of subject matter jurisdiction under 28 U.S.C. § 1331)
Reconsideration Denial: March 1, 2023
Denial of Interlocutory Appeal Under 28 U.S.C. § 1292(b): April 26, 2023
Second Reconsideration denial: June 12, 2023

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OPINIONS BELOW

The December 30, 2022, opinion of the District Court is reported at 2024 WL 18027569 and is attached as App.7a. The March 1, April 26 and June 12, 2023, opinions of the District Court are not officially reported but are attached at App.30a, 18a, and 25a, respectively.

The May 8, 2024, opinion of the Seventh Circuit is reported at 2022 WL 2036115 and is attached at App.1a. The June 25, 2024, opinion of the Seventh Circuit is not officially reported but is attached at App.23a.

JURISDICTION

The Judgment of the Seventh Circuit was issued on May 8, 2024. App.1a. Petitioner filed a motion for rehearing en banc on June 4, 2024. ECF 24. The motion was denied on June 25, 2024. App.23a. The deadline for filing this Petition under Sup. Ct. Rules 13.1 and 13.3 is September 23, 2024 (*i.e.*, 90 days from June 25, 2024).

On June 28, 2024, Petitioner filed a letter under Fed. R. App. P. ("FRAP") 28(j) calling the Seventh Circuit's attention to two new Supreme Court decisions dealing exclusively with standing, *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (June 13, 2024), and *Murthy v. Missouri*, 144 S.Ct. 1972 (June 26, 2024), and asking that court to assess the impact of those two cases. ECF 26; attached at App.40a. However, the Seventh Circuit refused and issued an

Order on July 3, 2024, stating that it would "take no action with regard to [Petitioner's] filing." ECF 27.

The basis for this Court's jurisdiction is 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. III, Section 2, Clause 1 - Subjects of Jurisdiction

> The judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States, and . . . to Controversies to which the United States shall be a Party. . . .

16 U.S.C § 742b–United States Fish and Wildlife Service

(b) Establishment; Director of United States Fish and Wildlife Service; appointment qualifications

> There is established within the Department of the Interior the United States Fish and Wildlife Service. The functions of the United States Fish and Wildlife Service shall be administered under the supervision of the Director, who shall be subject to the supervision of the Assistant Secretary for Fish and Wildlife. The Director of the United States Fish and Wildlife Service shall be appointed by the President, by and with the advice and consent of the Senate. No individual may be appointed as the Director unless he is, by reason of scientific education and experience,

knowledgeable in the principles of fisheries and wildlife management.

28 U.S.C. § 1331–Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Declaratory Judgment Act

28 U.S.C. § 2201–Creation of remedy

(a) In a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2202–Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

STATEMENT OF THE CASE[3]

A. Respondent Williams' Failure to Meet Statutory Qualification

Respondent Williams is a Montana-admitted lawyer on inactive bar status. She has never had, and does not now have, "scientific education and experience" within the meaning of 16 U.S.C. § 742b(b).[4] She received a Bachelor of Arts (B.A.) degree from the University of Virginia in 1989 and a Juris Doctor (J. D.) degree from the University of Montana School of Law in 1994.

Respondent Williams served as Legal Counsel for Montana Fish, Wildlife and Parks ("MFWP"; 1998-2011); Deputy Solicitor, Parks and Wildlife, for FWS (2011-2013); and Assistant Professor, University

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[3] Because Respondents have not filed an Answer, their challenges to standing and subject matter jurisdiction are facial. Thus, the well-pleaded facts set forth in the Complaint, which are the basis for the facts below, are assumed to be true. *E.g.*, *Jackson v. Payday Financial, LLC*, 764 F.3d 765, 773 n. 19 (7th Cir. 2014).

[4] Respondents argued in the District Court that "and" in 16 U.S.C. § 742b(b) means "or" so that Williams satisfies the statute based upon "experience" if not "scientific education." ECF 22-1, pp. 13-15 n. 9. This argument was rejected by the District Court in the context of a comparable subject matter jurisdiction statute, 28 U.S.C. § 1332(c)(1). *Navy Federal Credit Union v. LTD Financial Services, LP*, 972 F.3d 344, 350 (4th Cir. 2020) ("and" means "in addition to"); *BCBSM, Inc. v. Walgreen Co.*, 642 F.Supp.3d 732, 740-41 (N. D. Ill. 2022) (quoting from *Navy Federal*).

of Montana School of Law (2013-2017). These positions required legal, not scientific, education.

Respondent Williams served as Director of MFWP (2017-2020) and Principal Deputy Director for FWS (2021 until confirmed as FWS Director). These positions also did not require scientific education by statute or otherwise.

The FWS Director is appointed by the President of the United States with the advice and consent of the United States Senate. 16 U.S.C § 742b(b). President Biden announced his intention to nominate Respondent Williams to be FWS Director on October 22, 2021, and formally nominated her for that position on October 25, 2021.[5]

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[5] Apparently those involved in the nomination and confirmation process for Williams were aware of the "scientific education" requirement of 16 U.S.C. § 742b(b) as a result of the failed appointment in 2017 by then-Secretary of the Interior Ryan Zinke of Gregory Sheehan to be Acting Director of FWS. Daniel Jorjani, then-Principal Deputy Solicitor of the DOI, stated in a June 5, 2017, email to Lori Mashburn, then-DOI's White House Liaison, as follows:

> I just read through to the last line [of Defendant DOI's June 5, 2017, press release] and saw that [Sheehan is] also going to be Acting [FWS Director]. Sheehan just has a business degree: http://iwjv.org/bio/greg-sheehan Did someone already confirm that he can serve as Acting FWS Director w/o a degree in the appropriate field? Generally, the FWS Director should have a scientific degree in addition to real-world experience: http://www.law.cornell.edu/uscode/text/16/742b

Respondents DOI and FWS determined that Sheehan was disqualified from serving as Acting FWS Director due to his vio-

Due to a procedural requirement, on January 17, 2022, President Biden re-nominated Williams to be FWS Director.

Williams' confirmation hearing took place on November 17, 2021, before the Senate Committee on Environment and Public Works ("SEPW"). Only nine (of 20) members of the SEPW attended the hearing. The "scientific education" requirement of 16 U.S.C. § 742b(b) was not mentioned by members of the SEPW or Respondent Williams during the hearing.

On January 12, 2022, the SEPW voted to confirm Respondent Williams as FWS Director and advanced the confirmation process to the full Senate. She was confirmed as FWS Director by the full Senate on February 17, 2022, by voice vote. 168 Cong. Record D187 (Feb. 17, 2022). No Senator was required to vote for the record.

Williams has occupied the office of FWS Director continuously since her Senate confirmation to the present date and has fully participated, directly or indirectly, in all of FWS's decision-making processes since assuming office.

B. Petitioner's Environmental Activities

Petitioner has had a longstanding and passionate interest in the proper administration and enforcement of the ESA in accordance with the congressional purpose for its enactment. The Supreme Court in a landmark 1978 case stated that the ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."

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lation of 16 U.S.C. § 742b(b); his employment by Respondent FWS was terminated in 2018.

Tennessee Valley Authority v. Hill, 437 U.S. 153, 180 (1978).

Petitioner has spent substantial time in the Greater Yellowstone Ecosystem ("GYE") for more than 45 years. The GYE is a vast, mountainous and relatively unpopulated area consisting of almost 20 million acres in northeast Idaho, southwest Montana and northwest Wyoming that includes some of America's most cherished wild lands. In the period from 1998, when Petitioner completed construction of his home in Wilson, Wyoming, to the present date, he has visited the GYE 5–7 times annually for at least one week each visit.

During his visits to the GYE, Petitioner has regularly and frequently hiked and engaged in other outdoor activities within Grand Teton and Yellowstone National Parks and surrounding national forests. These activities have included wildlife viewing, wildlife and scenic photography, boating, cross-skiing, snow-shoeing and aesthetic enjoyment in areas inhabited by grizzly bears, a protected species in the Lower 48 States under the ESA; gray wolves, a protected species in most of the Lower 48 States under the ESA; and other species. Petitioner intends to continue these activities indefinitely.

Petitioner has participated (a) financially in successful group efforts to retire allotments for grazing domestic livestock held by private individuals on public lands under the jurisdiction of the DOI in the GYE to prevent wildlife conflicts with domestic grazing operations and (b) physically in group efforts to remove barbed wire fences on retired allotments so that wildlife can have unrestricted access to those public lands free of conflicts and traverse those public lands

free of danger from the fences particularly when hidden by deep snow.

Petitioner submitted detailed written comments to Respondents in opposition to its (a) 2005 proposed rule to remove ESA protection for GYE grizzly bears (70 Fed. Reg. 69854 (Nov. 17, 2005)) on February 20, 2006, and written supplements to those comments on March 4, June 12, October 4 and November 7, 2006, and February 12, 2007; (b) 2016 proposed rule to remove ESA protection for GYE grizzly bears (81 Fed. Reg. 13174 (March 11, 2016)) on May 9, 2016, and written supplements to those comments on May 14 and 17 and October 6, 2016; (c) notice inviting the public to submit comments with regard to the periodic review of implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (89 Fed. Reg. 20489 (March 22, 2024)); (d) notification that three species are not warranted for ESA protection (89 Fed. Reg. 51864 (June 20, 2024)); (e) final rule amending regulations for sport hunting and trapping in national preserves in Alaska (89 Fed. Reg. 55059 (July 3, 2024)); and (f) proposed rule to designate critical habitat under the ESA for the Barrens topminnow (89 Fed. Reg. 56253 (July 9, 2024)).

Petitioner also submitted detailed written comments to Respondents and the U.S. Department of Agriculture ("USDA") in support of protection and preservation of wildlife and critical habitat, including (a) the 2018 proposed amendment to 50 C.F.R. § 424.11 eliminating language from the regulations that precluded Respondents from taking economic and other impacts into account in listing, delisting and reclassifying decisions under the ESA (83 Fed. Reg.

35193 (July 25, 2018)), and a written supplement to those comments on October 5, 2018; (b) the 2015 Yellowstone Bison Management Plan and Environmental Impact Statement promulgated by the National Park Service, an agency of Respondent DOI, on June 15, 2015, and the State of Montana; (c) the USDA's 2016 Environmental Assessment: Predator Damage and Conflict Management in Wyoming promulgated by Animal and Plant Health Inspection Services (Ref: APHIS-2016-0084-0001) on December 15, 2016; (d) environmental organizations' April 19, 2017, Petition to List Giraffes under the ESA on May 8, 2019 (84 Fed. Reg. 17768 (April 6, 2019)); (e) the USDA's November 2020 East Paradise Range Allotment Management Plan, Environmental Assessment, requesting the termination of grazing allotments in Montana to protect public lands and wildlife and supplements to those comments on December 2, 3 and 28, 2020, and 2021 Decision Notice with regard to those allotments; and (f) the USDA's November 2021 Elk Ridge Complex Rangeland Supplementation Project Environmental Assessment on December 25, 2021.

Petitioner was plaintiff *pro se* and *pro bono* in a civil suit under 16 U.S.C. § 1540(g)(1)(A) to invalidate Respondent's 2007 first final rule removing ESA protection for GYE grizzly bears. *Aland v. Salazar*, U.S. District Court, Northern District of Illinois, Eastern Division, Case No. 1:07-cv-04358 (filed 2007; transferred to the Idaho District Court in 2008 and assigned Case No. 1:08-cv-00024). Petitioner was amicus curiae in the civil suit that invalidated that final rule. *Greater Yellowstone Coalition, Inc. v. Servheen*, 672

F.Supp.2d 1105 (D. Mont. 2009), *aff'd*, 665 F.3d 1015 (9th Cir. 2011).

Petitioner was a plaintiff *pro se* and *pro bono* in a consolidated civil suit under 16 U.S.C. § 1540(g)(1)(A) that invalidated Respondents' second final rule removing ESA protection for GYE grizzly bears. *Crow Indian Tribe v. United States*, 343 F.Supp.3d 999 (D. Mont. 2018), *aff'd*, 965 F.3d 662 (9th Cir. 2020).

Petitioner is a plaintiff *pro se* and *pro bono* in a civil suit under 16 U.S.C. § 1540(g)(1)(A) to invalidate Respondents' 2020 final rule removing ESA protection for gray wolves in the United States (except gray wolves in the Northern Rocky Mountain ("NRM") states dues to the inclusion by Congress in a 2011 federal appropriations bill of a rider that statutorily removed ESA protection for gray wolves in those states.).[6] *Aland v. U.S. Dept. of Interior*, Case No. 4:22-cv-01321 (N. D. Cal.). [7] That final rule was invalidated in related cases, *Defenders of Wildlife v. U.S. Fish & Wildlife Service*, 584 F.Supp.3d 812 (N. D. Cal. 2022), which are on appeal to the U.S. Court

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[6] Respondent Williams attributed the rider to a response by Congress "to mounting pressure from Montana and Idaho" and characterized the rider as a "reward" to those states. Martha M. Williams, *Lessons From the Wolf Wars: Recovery v. Delisting Under the Endangered Species Act*, 27 FORDHAM ENV'L LAW REV. 106, 139, 142 (2015).

[7] Petitioner's suit, initially filed in the District Court for the Northern District of Illinois in 2020, was transferred in 2022 to the District Court for the Northern District of California, where related civil suits were pending, and assigned Case No. 4:22-cv-01321.

of Appeals for the Ninth Circuit.[8] Cases Nos. 22-15529 et al. Petitioner's case was stayed by the California District Court pending resolution of the appeal by the Ninth Circuit.

Petitioner has devoted thousands of hours and expended significant funds over more than 20 years to the prosecution of these civil suits.

Petitioner intends to continue indefinitely his activities, including *pro se* and *pro bono* litigation, to protect and preserve species, including wildlife, and habitat against unlawful actions and inactions by Respondents and other federal agencies. Thus, Petitioner has an immediate, real, direct and continuing interest in and need for the proper administration and enforcement of the ESA in accordance with the congressional purpose for its enactment.

Petitioner's enjoyment of areas in which grizzly bears, gray wolves and other species occur has been and will continue to be immeasurably enhanced by the presence of these species, which are icons of American history and culture, enhance the wildness and natural state of these areas and are essential to the health of the overall ecosystems in which they occur. Thus, Petitioner has an immediate, real, direct, continuing and personal interest in and need for the protection and preservation of these species by Respondents.

Petitioner, as a result of Respondent Williams' illegal occupation of the office of FWS Director, has suffered, and will continue to suffer on an ongoing

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[8] Respondents filed their opening brief on September 13, 2024. ECF 32.

basis in the future, injury in fact, which is concrete and particularized and actual and imminent rather than conjectural or hypothetical due to the legal contamination of all decisions by Respondents in which she participates, directly or indirectly, that will result in determinations of invalidity by courts in lawsuits challenging those decisions.[9]

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[9] Petitions have been filed with FWS, for example, by Idaho (March 2022), Montana (December 2021) and Wyoming (January 2022) to remove ESA protections for grizzly bears in the GYE and Northern Continental Divide Ecosystem, which together contain close to 100% of the grizzly bears in the Lower 48 states. Respondents FWS and Williams will be required to grant or deny the petitions. Wyoming sued Respondents in 2023 in the Wyoming Federal District Court for missing a deadline for delisting grizzly bears. *Wyoming v. Haaland et al.*, Case No. 2:23-cv-00092-ABJ. Petitioner has filed a motion for leave to file an *amicus curiae* brief in that case. The motion is pending.

If ESA protection is terminated for grizzly bears by the FWS for a third time, litigation again will follow. *See Crow Indian Tribe, supra*; *Greater Yellowstone, supra.* If the delisting rule is upheld in litigation, trophy hunting of grizzly bears will resume in accordance with the *Memorandum of Agreement Regarding the Management and Allocation of Discretionary Mortality of Grizzly Bears in the Greater Yellowstone Ecosystem* ("MOA") signed by Idaho, Montana and Wyoming in 2016. "Discretionary Mortality" in the title means trophy hunting; the MOA divides trophy hunting deaths among the three states on a proportionate basis. Implementation of the MOA has been prevented by the litigations described herein. Respondents FWS and Williams will be required to decide whether FWS will defend the third delisting rule when litigation materializes.

Pending in Congress are bills to overrule the results of the grizzly bear litigations. Cong. Research Service, *Grizzly Bears and the Endangered Species Act* (R48116; June 28, 2024). The bills would (a) require FWS to re-issue the rule removing the bears' ESA protection that was invalidated in litigation; (b) preclude comments by the public otherwise permitted by the

These and other actions and inactions by Respondents FWS and Williams are not speculative; they present real and present dangers to the survival of species such as grizzly bears and gray wolves, especially taking into consideration Williams' lack of "scientific education" as required by Congress for the Director in 16 U.S.C. § 742b(b).

The legally contaminated decisions by Respondents due to the involvement of Respondent Williams could result in (a) the killing and maiming of grizzly bears, gray wolves and other species that produces ecological harm to the ecosystems where these

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Administrative Procedure Act ("APA"), 5 U.S.C. § 553; and (c) preclude judicial review. Respondents FWS and Williams will be required to decide whether to support or oppose these bills. Every indication is that they will support delisting. *See* ¶ 14 of February 22, 2024, Stipulation of Dismissal and Settlement Agreement (ECF 26), *Save the Yellowstone Grizzly v. U.S. Fish & Wildlife Service*, Case No. 4:23-cv-00363 (D. Idaho).

As another example, as discussed above, in February 2022 the District Court for the Northern District of California struck down a 2020 rule issued by Respondent FWS that removed ESA protection for gray wolves in the United States *Defenders of Wildlife, supra.* The cases are on appeal to the Ninth Circuit. Cases Nos. 22-15529 et al. Respondents FWS and Williams will be required to decide whether to continue to prosecute the appeals.

Petitions were filed with Respondent FWS to restore ESA protection for gray wolves throughout the United States, including the NRM states. On August 9, 2022, a civil suit under the ESA was filed for declaratory and injunctive relief to require Respondent FWS to grant the petitions. *Center for Biological Diversity v. U.S. Department of the Interior*, Montana District Court, Case No. 9:22-cv-00134. Respondents FWS and Williams will be required to decide whether or not to continue to defend the litigation or grant the petitions and render the litigation moot.

species now occur and will occur in the future; (b) adverse impact on Petitioner's recreational pursuits such as hiking, boating, cross-country skiing, wildlife viewing and photography and aesthetic enjoyment; (c) continuing and substantial additional costs and investments of time by Petitioner; and (d) loss to Petitioner and others, in the words of the philanthropist and environmentalist, Laurance S. Rockefeller, whose name adorns the Laurance S. Rockefeller Visitor Center in Grand Teton National Park, Wyoming, of the "spiritual renewal that comes along with the wonder of the natural world."

These injuries will be directly traceable to Respondent Williams as a result of her illegal occupation of the office of FWS Director and the resulting legal contamination of her decisions; and it is likely, and not merely speculative, that the injuries will be redressed by a declaration by the District Court resulting in the removal of Respondent Williams from office.

C. Jurisdiction of District Court

The basis of jurisdiction of the District Court, which is one of the major issues before this Court, as discussed below, is 28 U.S.C. § 1331.

REASONS FOR GRANTING THE PETITION

I. PETITIONER HAS STANDING

Justice Barrett recently described the standing requirement in *Murthy v. Missouri*, 144 S.Ct. 1972, 1985-86 (June 26, 2024; citations omitted), as follows:

> Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." The "case or controversy" requirement is "'fundamental to the judiciary's proper role in our system of government.'" Federal courts can only review statutes and executive actions when necessary "to redress or prevent actual or imminently threatened injury to persons caused by . . . official violation of law." As this Court has explained, "[i]f a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so."
>
> A proper case or controversy exists only when at least one plaintiff "establish[es] that [she] ha[s] standing to sue." She must show that she has suffered, or will suffer, an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." These requirements help ensure that the plaintiff has "such a personal stake in the outcome of the controversy as to warrant [her] invocation of federal-court jurisdiction.". . . .

See, e.g., TransUnion LLC v. Ramirez, 594 U.S. 413, 423-24 (2021); *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992); *American Bottom Conservancy v. U.S. Army Corps of Engineers*, 650 F.3d 652, 655-56 (7th Cir. 2011); *Bensman v. U.S. Forest Service*, 408 F.3d 945, 948-49 (7th Cir. 2005).

Petitioner has alleged in great detail in the Complaint sufficient facts to meet each of the three standing requirements, especially since Respondents have not filed an Answer and the alleged facts must be taken as true.[10] In summary, since 1974, and especially over the last two decades, Plaintiff has demonstrated his absolute commitment to protection and preservation and enjoyment of the environment, particularly wildlife, by (a) visiting on a frequent, regular and year-around basis the NRM area to engage in hiking and other outdoor activities and wildlife viewing and photographing (including grizzly bears, gray wolves and many other species); (b) participating physically and financially in group efforts to retire grazing allotments on public lands and remove barbed wire fences on those allotments to protect migrating wildlife; (c) submitting numerous written comments to Respondents with regard to proposed rules that Petitioner believed would adversely affect wildlife and public lands; and (d) litigating extensively on a *pro se* and *pro bono* against Respondents to protect grizzly bears and gray wolves against Respondents' efforts to remove their protections under the ESA. Moreover, Petitioner is strongly committed to continuing these activities indefinitely into the future.

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[10] *See* footnote 3.

If Petitioner's ability to continue to view and enjoy wildlife and public lands is adversely affected, for example by loss of a species such as grizzly bears, he will suffer a concrete and particularized injury of the most serious personal nature. If Respondents' removal of federal protection for grizzly bears had not been invalidated by judicial intervention, the bears' numbers, barely above the level required for species survival, would have been substantially reduced by trophy hunting under the MOA in the three states in which almost all of the bears occur.

The Seventh Circuit has clearly recognized that viewing and enjoying wildlife and public lands satisfy the first standing requirement:

> Consistent with the practical as well as doctrinal thinking behind the requirement of standing, a plaintiff, to establish Article III standing to sue, must allege, and if the allegation is contested must present evidence, that the relief he seeks will, if granted avert or mitigate or compensate *him* for an injury-though not necessarily a great injury-caused by or likely to be caused by the defendant. . . .
>
> The magnitude, as distinct from the directness, of the injury is not critical to the concerns that underlie the requirement of standing; and so denying a person who derives pleasure from watching wildlife or the opportunity to watch it is a sufficient injury to confer standing.

American Bottom Conservancy, supra at 656 (Emphasis in original; citations omitted). *See Bensman, supra* at 983.

Turning to the second standing requirement, there is no doubt that Petitioner's injury is directly traceable to Respondents, particularly Respondent Williams, who, as the most important wildlife official in the federal government, has been directly involved in numerous species decisions since assuming office and will continue to be involved in critical species decisions in the future, including decisions with regard to grizzly bears and gray wolves. All species decisions by Respondents FWS and Williams will be legally contaminated and subject to legal challenge by aggrieved persons, including Petitioner.

Turning to the third standing requirement, a grant of the relief requested by Petitioner under the DJA – declaration that Respondent Williams holds office in violation of 16 U.S.C. § 742b(b) and enforcing her departure from office – will redress the actual and imminent injury to Petitioner.

Petitioner's record over the last two decades consisting of the enjoyment of, and actions to protect and preserve, wildlife and public lands leave no doubt that (a) he will be injured by contaminated decisions by Respondent Williams; (b) those injuries will be traceable to Williams; and (c) the injuries will be redressed by Williams' departure from office. Clearly Petitioner has standing in this case.

Respondents did not even mention, much less attempt to distinguish, the two Seventh Circuit decisions relied upon by Petitioner with regard to standing, *American Bottom Conservancy*, *supra*, and *Bensman*, *supra*. This omission explains why Respondents downgraded their standing argument to "alternative" status.

Petitioner submitted two FRAP 28(j) letters to the Seventh Circuit before it issued its decision on May 8, 2024. The first, dated November 15, 2023 (App.34a), called the Court's attention to *Brown v. Kemp*, 86 F.4th 745 (7th Cir. 2023), which strongly supports Petitioner's position with regard to standing. The second, dated March 18, 2024 (App.37a), called the Court's attention to *Parents Protecting Our Children, Ltd. v. Eau Claire Area School District*, 95 F.4th 501 (7th Cir. 2024), also strongly supports Petitioner's standing position by negative implication.

The Seventh Circuit, in a superficial May 8, 2024, decision, based only upon a "glance" at Petitioner's Complaint, rejected Petitioner's standing position in one sentence: [Petitioner] did not demonstrate a concrete and particularized injury that makes him individually suited to bring this sort of claim." App.4a. The Seventh Circuit did not bother to address, or even cite, *American Bottom Conservancy*, *Bensman*, *Brown* and *Parents*. Instead the Seventh Circuit only cited this Court's decision in *TransUnion*, a class action involving facts and circumstances not even close to the facts and circumstances of this case, in which this Court, by a 5-4 vote, with two dissenting opinions, held that there was no standing based on the particular facts and circumstances. *TransUnion*, perhaps of general interest with regard to standing, is irrelevant with regard to the unique facts and circumstances of this case.

Petitioner filed a petition for reconsideration en banc by the Seventh Circuit on June 4, 2024, which was summarily denied on June 25, 2024. However, on June 28, 2024, Petitioner submitted another FRAP 28(j) letter (App.40a) calling the Seventh Circuit's

attention to two recent decisions of this Court dealing exclusively with standing, *Alliance for Hippocratic Medicine*, *supra*, and *Murthy*, *supra*, and requesting the Seventh Circuit to assess the impact of those decisions on this case. The letter briefly explained why those cases supported Petitioner's position by negative implication. However, on July 3, 2004, the Seventh Circuit refused to consider *Alliance* and *Murthy*, stating: "The court will take no action on the [Petitioner's] filing." ECF 27. Thus, the Seventh Circuit has barely, if at all, considered standing in this case.

Petitioner, a committed environmentalist with a proven track record of actions over more than 20 years, has clearly established, based upon detailed and well-pleaded facts, including substantial financial expenditures, which will continue, that he has suffered, and will continue to suffer, concrete past, present and future injuries that are directly traceable to Respondents and can be remedied by a favorable decision in this case. What more could Petitioner have done over these years to earn legal standing to pursue this lawsuit to protect wildlife?

II. DISTRICT COURT HAS SUBJECT MATTER JURISDICTION

A. Federal Question

The subject matter jurisdiction statute, 28 U.S.C. § 1331, is only one sentence in length and contains only 22 words: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." (Emphasis added.) It is clear, unequivocal and straightforward. It is intended to provide an obstacle-

free pathway to subject matter jurisdiction in a federal district court. As Justice Gorsuch stated in his concurring opinion in *Axon* with regard to 28 U.S.C. § 1331 (598 U.S. at 205; emphasis in original):

> Not *may* have jurisdiction, but *shall*. Not *some* civil actions arising under federal law, but *all*. The statute is as clear as statutes get. . . .

This Court in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), reminded us that 28 U.S.C. § 1331 is not to be blocked by artificial obstacles on a case-by-case basis of the type erected by the District Court and Seventh Circuit in this case.[11] As Justice Gorsuch stated (598 U.S. at 212; citations omitted):

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[11] Although there are hundreds, if not thousands, of cases under 28 U.S.C. § 1331, that number is nowhere near as large as might be expected taking into consideration the fact that all cases in the federal court system must have jurisdictional bases and in the overwhelming majority of those cases that basis is 28 U.S.C. § 1331 or § 1332 (diversity). No doubt the reason is that the overwhelming majority of federal district courts correctly apply 28 U.S.C. § 1331 for its intended purpose: To make sure only real federal legal issues are adjudicated in the federal court system. *E.g., Carlson v. United States*, 837 F.3d 753, 761 (7th Cir. 2016). A large percentage of cases under 28 U.S.C. § 1331 involve the issue of whether the underlying legal issues are state or federal. *E.g., Gunn v. Minton*, 568 U.S. 251 (2013); *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850-56 (1985); *Franchise Board of State of California v. Construction Laborers Vacation Trust for S. California*, 463 U.S. 1, 7-22 (1983); *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257 (1916); *Sarauer v. Int'l Assn of Machinists & Aerospace Workers Dist. No. 10*, 966 F.3d 661, 668-75 (7th Cir. 2020); *Sarelas v. Sheehan*, 326 F.2d 490 (7th Cir. 1963);. Frequently district courts do no more than refer to 28 U.S.C. § 1331 in footnotes. *E.g., Phoenix Ins. Co., Ltd. v. ATI Physical*

> Jurisdictional rules, this Court has often said, should be "clear and easy to apply." For parties, "[c]omplex jurisdictional tests complicate a case, eating up time and money as [they] litigate, not the merits of their claims, but which court is the right court to decide those claims. For courts, jurisdictional rules "mark the bounds" of their "'adjudicatory authority.'" Judges therefore "benefit from straightforward rules under which they can readily assure themselves of their power to hear a case," while "adventitious" rules leave them with "almost impossible" tasks to perform that squander their limited resources.

The plaintiffs in *Axon* filed lawsuits in federal district courts under the DJA to challenge the constitutionality of federal statutes that displaced district court review of challenges to actions by two federal agencies, the SEC and FTC, and authorized the agencies' administrative law judges to consider and decide those challenges subject to review by circuit courts of appeal.

The defendant agencies argued that the statutes validly replaced district courts with internal administrative law judges. The plaintiffs argued that the administrative law judges were not accountable to the President and, therefore, that the statutes violated separation of powers principles and were unconstitutional. Justice Kagan, writing for the majority, described the challenges as "fundamental, if not existential." *Id.* at 897. This Court unanimously

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Therapy, 690 F.Supp.3d 862 n. 2 (N. D. Ill. 2023); *Sapp v. Foxx*, 2023 WL 4105942 n. 2 (N. D. Ill. 2023).

rejected the agencies' position and held that the statutes could not displace district court review under 28 U.S.C. § 1331 and the DJA.[12]

The District Court and Seventh Circuit lost sight of this Court's admonitions in *Axon* and *Mims*. Instead of accepting subject matter jurisdiction and moving on to the issue under 16 U.S.C. § 742b(b), the two courts searched for an obstacle to subject matter jurisdiction and wrote multiple opinions to achieve

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[12] *See Mims v. Arrow Financial Services, LLC*, 565 U.S. 368 (2012). In *Mims* the plaintiff filed a lawsuit in a federal district court seeking damages for the defendant's violation of a federal statute that banned certain telemarketing practices and explicitly vested adjudicative authority in (a) federal district courts in lawsuits brought by states to enjoin those practices and award damage to the states on behalf of their residents and (b) state courts to provide redress in private actions for violations of the statute. Defendant argued that the statute vested exclusive adjudicative authority over private lawsuits in state courts, and, therefore, the federal district court did not have subject matter jurisdiction under 28 U.S.C. § 1331. This Court unanimously rejected the defendant's argument. Justice Ginsburg, writing for the Court, stated in language equally applicable in this case (*Id.* at 386-87):

> Nothing in the text, structure, purpose, or legislative history of the [federal anti-telemarketing statute] calls for displacement of the federal-question jurisdiction U.S. district courts ordinarily have under 28 U.S.C. § 1331. In the absence of direction from Congress stronger than any [the defendant] has advanced, we apply the *familiar default rule: Federal courts have § 1331 jurisdiction over claims that arise under federal law*. . . . (Emphasis added.)

that result, even before an Answer was filed, a waste of judicial resources.[13]

Their search ended with the erection of an unnecessary obstacle: Judicial amendment of 28 U.S.C. § 1331 adding a "cause of action" requirement to the federal question requirement that contravenes the purpose of 28 U.S.C. § 1331. Thus, according to the Seventh Circuit, 28 U.S.C. § 1331 must include a "right to sue to enforce the statute," but 16 U.S.C. § 742b(b) "does not purport to create a right to sue to enforce its provisions; indeed, it does not even prohibit any conduct." App.5a. Of course, that is wrong; at the very least it implies that the President cannot violate the statute.

The District Court relied primarily upon the Seventh Circuit's decision in *E. Central Ill. Pipe Trades Health & Welfare Fund v. Prather Plumbing & Heating, Inc.*, 3 F.4th 954 (7th Cir. 2021). In that case the plaintiffs sought to recover an existing ERISA judgment from a newly-formed company under the federal common law doctrine of successor liability. The Seventh Circuit held that the issue of successor liability under ERISA did not "arise under" a "law . . . of the United States" within the meaning of 28 U.S.C. § 1331, stating:

> Recall that [plaintiffs'] complaint alleged that [defendant], as a successor to the now-defunct Prather Plumbing Inc., is liable for

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[13] *See Sackett v. EPA*, 598 U.S. 651 (2023) (subject matter jurisdiction provided by "law . . . of the United States," Clean Water Act, 33 U.S.C. §§ 1251 et seq.; procedural framework provided by DJA and APA, 5 U.S.C. § 702; *together* gave plaintiffs right to maintain lawsuit).

> the accounts Prather Plumbing owes to [plaintiffs]. We have recognized that successor liability in the ERISA domain is a creation of federal common law. In that sense, [plaintiffs'] complaint implicates federal law. But it does not necessarily follow that federal law has also created a *cause of action* to enforce this doctrine in federal court.

3 F.4th at 960 (emphasis added). The District Court in this case seized upon the Seventh Circuit's "cause of action" language in *Prather Plumbing* as the obstacle that it sought to subject matter jurisdiction in this case, but clearly the Seventh Circuit did not use "cause of action" for that purpose. It was merely stating that no question arose under the "laws . . . of the United States" within the meaning of 28 U.S.C. § 1331.

In stark contrast, this case arises squarely under federal law, 16 U.S.C. § 742b(b); federal law is not merely "implicated" as in *Prather Plumbing*. Therefore, this case gives this Court the perfect vehicle to set forth, once again, clearly and unequivocally, the scope and purpose of 28 U.S.C. § 1331, which are to provide subject matter jurisdiction when a question of U.S. law is involved without searching for an obstacle such as "cause of action" that can be erected to deny jurisdiction as the District Court and Seventh Circuit have done in this case.

The Seventh Circuit did not even attempt to explain its *Prather Plumbing* decision. It said only that "the [District Court] correctly applied the law" and cited *Prather Plumbing*.

The Seventh Circuit's analysis in *Prather Plumbing* included an important comparison of *Peacock v. Thomas*, 516 U.S. 349 (1996), which denied jurisdiction under 28 U.S.C. § 1331 because the plaintiff failed to identify any ERISA or NLRA issue by violation of a collective bargaining agreement, with its decision in *McCleskey v. CWG Plastering, LLC*, 897 F.3d 899 (7th Cir. 2018), which applied the "same framework" to uphold jurisdiction under 28 U.S.C. § 1331 because the plaintiff explicitly alleged a violation of ERISA and the NLRA. 3 F.4th at 959-62. This case, like *McCleskey* and unlike *Peacock*, involves explicit allegations throughout the Complaint of a violation of a federal statute, 16 U.S.C. § 742b(b).

B. Declaratory Judgment Act

Even if this Court concludes that the Seventh Circuit's judicial amendment of 28 U.S.C. § 1331 is correct, which Petitioner denies, that is not the end of the story. Instead 16 U.S.C. § 742b(b) works *in combination with the DJA* to provide the necessary framework for standing in this case. [14] The DJA gives the courts the authority to interpret 16 U.S.C.

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[14] Petitioner acknowledges that the DJA itself does not itself confer jurisdiction in this case. It permits declaratory relief when an independent basis for federal subject matter jurisdiction exists (here 28 U.S.C. § 1331). The statutes *work together* to provide jurisdiction and relief. *See Skelly Oil Co. v. Philips Petroleum Co.*, 339 U.S. 667, 671-72 (1950).

The title ("Creation of remedy") and operative language (" . . . any court of the United States . . . may declare the rights and other legal relations of any party seeking such declaration. . . . Any such declaration shall have the force and effect of a final judgment or decree. . . . ") of 28 U.S.C. § 2201 are clear and unequivocal.

§ 742b(b) (28 U.S.C. § 2201) and to enforce that interpretation (28 U.S.C. § 2202).

The purpose of the DJA – settle disputes as early as possible to avoid litigation in the future – was stated by the Fourth Circuit shortly after the DJA's enactment in the leading case of *Aetna Casualty & Surety Co. v. Quarles*, 92 F.2d 321, 325 (4th Cir. 1937), as follows:

> The statute providing for declaratory judgments meets a real need and should be liberally construed to accomplish the purpose intended, *i.e.*, to afford a speedy and inexpensive method of adjudicating legal disputes without invoking the coercive remedies of the old procedure, and to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships. . . .
>
> The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding. . . .

See Sears, Roebuck & Co. v. American Mut'l Liability Ins. Co., 372 F.2d 435, 438 (7th Cir.1967); *Garanti Finansal Kiralama v. Aqua Marine & Trading, Inc.*, 697 F.3d 59, 66 (2d Cir. 2012).

The purpose of the DJA clearly is satisfied in this case, since it is far better for the judicial system

to avoid future 16 U.S.C. § 742b(b) disputes now than to await multiple cases in the future in which the issue (and comparable issues in other cases involving Presidential appointments in violation of statutory requirements) is presented to federal courts.

The term "actual controversy" in 28 U.S.C. § 2201 refers to "Controversies" that are justiciable under Article III, Section 2, Clause 1 of the U.S. Constitution. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007). This Court stated the "actual controversy" requirement as follows: "Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." [15] *MedImmune* at 127, quoting *Maryland Casualty Co. v. Pacific*

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[15] The procedure for obtaining a declaratory judgment relief is provided by Fed. R. Civ. P. ("FRCP") 57. The Advisory Committee Notes state:

> A declaratory judgment is appropriate when it will "terminate the controversy" giving rise to the proceeding. Inasmuch as it often involves only an issue of law on undisputed facts or relatively undisputed facts, it operates frequently as a summary judgment proceeding, justifying docketing the case for early hearing . . .
>
> The existence or nonexistence of any right, duty, power, liability, privilege, disability, or immunity or of any fact upon which such legal relations depend, or of status, may be declared. The petitioner must have a practical interest in the declaration sought. . . .
>
> The demand for relief shall state with precision the declaratory judgment desired, to which may be joined a demand for coercive relief. . . .

Coal & Oil Co., 312 U.S. 270, 273 (1941). This Court further stated that "our analysis must begin with the recognition that, where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat. . . ." *MedImmune* at 128-29 (emphasis by the Court).[16]

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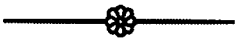
[16] In *Union Pacific Railroad Co. v. Regional Transp. Authority*, 74 F.4th 884 (7th Cir. 2023), Union Pacific ("Railroad"), which supplied track, work force and ticket sales, notified the Regional Transportation Authority ("Metra"), which owned the rolling stock, that services would be discontinued. Metra replied that Railroad could not discontinue services without approval from the Surface Transportation Board, it contended that the earlier repeal of the federal statutes giving the Board authority over service discontinuation as part of deregulation of the industry locked Railroad into its relationship with Metra. Railroad, rejecting that argument on the ground that deregulation allowed it to terminate the relationship at any time based on business considerations, asked the District Court for a declaratory judgment under the DJA.

The District Court denied Metra's motion to dismiss and granted Railroad's motion for summary judgment. The Seventh Circuit affirmed (*Id.* at 886; italics in original; citations omitted):

> In this court Metra. . . . contends that [Railroad] lacks a case or controversy within the scope of Article III. Metra asserts that this litigation is just about establishing a framework that will affect the price of service that the Railroad plans to continue providing. But that's not what [Railroad] says. It contends that it is entitled to cease running trains for Metra and that it *wants* to stop, but that it is concerned about the potential penalties for doing so if Metra is right. The parties are at odds about a legal issue with concrete consequences for them. Resolving such dispute is a main function of the declaratory judgment statute, 28 U.S.C. § 2201.

This case involves an actual controversy because the parties dispute whether Respondent Williams holds office in violation of 16 U.S.C. § 742b(b), a law of the United States. The dispute is (a) between parties having adverse interests; (b) immediate, because Respondent Williams' continuation in office as FWS Director risks legal contamination of all FWS decisions in which she participates, directly or indirectly, from the present time (and before) to the time she leaves office[17]; and (c) real, because illegal decisions could result in deaths of injuries to endangered and threatened species that are the subjects of those decisions. It is essential that the courts involved in this case determine that Respondent Williams occupies the office of FWS Director illegally and order her removal from office so that those immediate and real consequences of the legally contaminated FWS decisions in which she has participated, and will participate, can be eliminated or minimized.



The identical situation in principle is presented here. Petitioner believes that Respondent Williams occupies the position of FWS Director in violation of 16 U.S.C. § 742b(b). This federal question can be resolved in countless lawsuits in the future challenging individual actions (*e.g.*, removal of ESA protection for grizzly bears) by Respondent FWS under the direction and with the approval of Williams; or the federal question can be resolved in this case pursuant to 28 U.S.C. § 1331 and the DJA with benefits of the type involved in *Union Pacific* and savings of judicial resources.

[17] *See Indiana Right to Life Victory Fund v. Morales*, 112 F.4th 466, 469-70 (7th Cir. 2024); *L.M.-M. v. Cuccinelli*, 442 F.Supp.3d 1 (D. D. C. 2020); *Behring Regional Center LLC v. Wolf*, 544 F.Supp.3d 937 (N.D. Cal. 2021).

CONCLUSION

This Court has the opportunity to decide whether a fundamental question of federal law, one of first impression and national significance because of the unique context, arising under a federal statute, 16 U.S.C. § 742b(b), must be decided by the District Court. If the answer is yes, this case will be back on course and Petitioner (and other plaintiffs who challenge illegal officeholders) will have judicial recourse. If the answer is no and the Seventh Circuit's superficial and erroneous decision is allowed to stand, there is no pathway to challenge Presidential appointments made in violation of statutory requirements, even if intentional as apparently happened in this case. Thus, congressional intent to limit Presidential appointments to qualified persons can be flaunted at will without fear of challenge; congressional qualifications can be repealed as a practical matter without legislative involvement. This clearly is a compelling reason for this Court to grant this Petition; it can be a consequential case in the development of the law with regard to standing and subject matter jurisdiction.

This Court should grant this Petition; determine that Petitioner has standing; determine that the District Court has subject matter jurisdiction; and return this case to the District Court with instructions to decide the fundamental question of federal law under 16 U.S.C. § 742b(b) and grant the appropriate relief under the DJA.

Respectfully submitted,

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